

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)


REC'D 10 MAY 2005

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Applicant's or agent's file reference SA1001.01P/MAB	FOR FURTHER ACTION		See Form PCT/IPEA/416
International application No. PCT/AU2004/000541	International filing date (day/month/year) 27 April 2004	Priority date (day/month/year) 30 May 2003	
International Patent Classification (IPC) or national classification and IPC Int. Cl. ⁷ A45D 19/02			
Applicant SAILNOTE PTY LTD et al			

1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 4 sheets, including this cover sheet.
3. This report is also accompanied by ANNEXES, comprising:
- a. ☐ (sent to the applicant and to the International Bureau) a total of sheets, as follows:
- ☐ sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).
- ☐ sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.
- b. ☐ (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or table related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).
4. This report contains indications relating to the following items:
- ☒ Box No. I Basis of the report
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☒ Box No. VIII Certain observations on the international application

Date of submission of the demand 21 May 2004	Date of completion of the report 27 April 2005
Name and mailing address of the IPEA/AU AUSTRALIAN PATENT OFFICE PO BOX 200, WODEN ACT 2606, AUSTRALIA E-mail address: pct@ipaaustralia.gov.au Facsimile No. (02) 6285 3929	Authorized Officer  DAVID MELHUIH Telephone No. (02) 6283 2426

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/AU2004/000541

Box No. I Basis of the report

1. With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.

☐ This report is based on translations from the original language into the following language which is the language of a translation furnished for the purposes of:

☐ international search (under Rules 12.3 and 23.1 (b))

☐ publication of the international application (under Rule 12.4)

☐ international preliminary examination (under Rules 55.2 and/or 55.3)

2. With regard to the elements of the international application, this report is based on (*replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report*):

☒ the international application as originally filed/furnished

☐ the description:

pages as originally filed/furnished

pages* received by this Authority on with the letter of

pages* received by this Authority on with the letter of

☐ the claims:

pages as originally filed/furnished

pages* as amended (together with any statement) under Article 19

pages* received by this Authority on with the letter of

pages* received by this Authority on with the letter of

☐ the drawings:

pages as originally filed/furnished

pages* received by this Authority on with the letter of

pages* received by this Authority on with the letter of

☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing.

3. ☐ The amendments have resulted in the cancellation of:

☐ the description, pages

☐ the claims, Nos.

☐ the drawings, sheets/figs

☐ the sequence listing (*specify*):

☐ any table(s) related to the sequence listing (*specify*):

4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

☐ the description, pages

☐ the claims, Nos.

☐ the drawings, sheets/figs

☐ the sequence listing (*specify*):

☐ any table(s) related to the sequence listing (*specify*):

* If item 4 applies, some or all of those sheets may be marked "superseded."

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INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/AU2004/000541

Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims 4, 8, 9	YES
	Claims 1 - 3, 5 - 7	NO
Inventive step (IS)	Claims 4, 8, 9	YES
	Claims 1 - 3, 5 - 7	NO
Industrial applicability (IA)	Claims 1 - 9	YES
	Claims	NO

2. Citations and explanations (Rule 70.7)

NOVELTY (N) Claims 1-3, 5-7:

D1 - WO 2001/076977 A1

D1 discloses all the features of claims 1 to 3 and 5 to 7. It shows in figures 5 and 6 a hair colourant applicator comprising a container 10 containing a first part of a hair colourant, a subcontainer comprising collar 30 and container 20 joined together in an interference fit containing a second part of a hair colourant, and an assembly comprising cap 40 and annular plug seal 45 to rupture the subcontainer to mix the first and second parts of the hair colourant. The subcontainer is suspended into the first part of the hair colourant and the forcing member 45 acts on an inside ledge of the subcontainer. Therefore all features of claims 1 to 3 and 5 to 7 are disclosed by D1.

INVENTIVE STEP (IS) Claims 1-3, 5-7:

D2 - US 4591050 A

D3 - US 5811060 A

D4 - US 3349966 A

D5 - JP 11-263366 A

D4 and D5 disclose hair colourant applicators that mix first and second parts just before use, and which use sponges to apply the hair colourant. For example D4 shows in figure 1 an applicator which mixes parts A and B and applies the mixture with sponge 23. Such applicators are well known in the art. D2 and D3 disclose two component packages that mix the two components just before use in exactly the same way as defined in claim 1, but they are not hair colourant applicators. However using standard two component mixers such as disclosed in D2 and D3 in place of the mixing arrangement found in the two part mixing hair colourant applicators of D4 and D5 is not considered to be inventive. I consider that this difference between the claimed invention and the citation constitutes no more than a mere workshop improvement. It is an arrangement that any competent worker in the art would be expected to make directly and without difficulty and by routine steps alone. The combination of two component mixers as shown in D2 or D3 with the hair colourant applicators shown in D4 or D5 results in a hair colourant applicator with all the features of claims 1 to 3 and 5 to 7. Therefore the claimed invention does not involve an inventive step.

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Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

1. Claim 2 lacks clarity because it is not clear whether "the opening" (line 3) refers to the opening of the container or the subcontainer.

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